

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, Administrator of)	
the Estate of DEREK GRAY et al.,)	
)	
Plaintiffs,)	C.A No: 04-312-L
)	
vs.)	(R.I. Superior Court
)	C.A. No. PC 04-3985)
JEFFREY DERDERIAN, et al.,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant ANHEUSER-BUSCH, INC., by its undersigned attorneys,
hereby gives notice of its removal of this action, pursuant to 28 U.S.C. §1369, 28 U.S.C.
§1441(e), and 28 U.S.C. §1446, to the United States District Court for the District of
Rhode Island and in support thereof states as follows:

INTRODUCTION

1. On February 20, 2003, a fire destroyed The Station nightclub
located in West Warwick, Rhode Island, resulting in the deaths of 100 people and
injuries to hundreds more. *See* Compl. at p. 17.
2. Within weeks of the tragedy, multiple lawsuits were filed in both
federal and state courts. On April 22, 2003, *Passa v. Derderian*, 03-CV-148 was filed
in this court and assigned to the Honorable Judge Ronald R. Lagueux. Subject matter
jurisdiction was predicated upon the newly enacted Multiparty, Multiforum Trial
Jurisdiction Act ("MMTJA" or "the Act"), which vests federal courts with jurisdiction

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over actions involving a single accident at a discrete location resulting in the death of at least 75 persons. *See* 28 U.S.C. § 1369 (2003) (“Section 1369”).¹

3. On May 30, 2003, Anheuser-Busch, Inc. removed to this Court two of the actions originally filed in state court, asserting the MMTJA as the basis for subject matter jurisdiction. *See Kingsley v. Derderian*, 03-CV-208; *Kinan v. Derco, LLC*, 03-CV-207 (the *Kinan* action was voluntarily dismissed on July 8, 2003). On August 7, 2003, several parties (including Anheuser-Busch) relied on the MMTJA once again to remove three miscellaneous petitions that were filed in the Rhode Island state court shortly after the fire seeking to preserve certain pieces of evidence. *See Alves v. McLaughlin & Moran, Inc.*, 03-MC-70; *O’Brien v. McLaughlin & Moran, Inc.*, 03-MC-71; *Unnamed Manufacturers v. McLaughlin & Moran, Inc.*, 03-MC-72 (the *Unnamed Manufacturers* petition was withdrawn on September 19, 2003). All of the removed actions were assigned to Judge Lagueux. *See* Exhibit A.

4. Various parties challenged the Court’s subject matter jurisdiction under the MMTJA. The issues were briefed and on October 15, 2003, Judge Lagueux heard oral argument. On March 29, 2004, he ruled that (1) the Court had subject matter jurisdiction over the pending fire-related actions under Section 1369 of the MMTJA; and (2) abstention under Section 1369(b) was not required. *See Passa v. Derderian*, 308 F. Supp. 2d 43, 65 (D.R.I. 2004). Judge Lagueux also stayed all discovery “until

¹ “[I]t is clear than in enacting § 1369, Congress intended to create a mechanism whereby litigation stemming from one major disaster could easily be consolidated in one federal court for discovery and trial.” *Passa v. Derderian*, 308 F. Supp. 3d 43, 53 (D.R.I. 2004).

September 1, 2004, in order to allow all potential plaintiffs an opportunity to bring suit and participate in discovery from the outset.” *Id.*

5. On July 22, 2004, this action was filed in the Superior Court of Providence County on behalf of over 200 individuals seeking to recover for injuries arising out of The Station fire.

6. This action is removable under the MMTJA for all of the reasons set forth in Judge Lagueux’s March 29 opinion. *See Passa*, 308 F. Supp. 2d 43. Specifically, subject matter jurisdiction exists under Section 1369(a) and the requirements of 28 U.S.C. § 1441(e)(1)(A) and (e)(1)(B)² have been met. First, this action is removable under Section 1441(e)(1)(A) because the action could have been originally filed under Section 1369(a). Alternatively and independently, this action is also removable under Section 1441(e)(1)(B) because Anheuser-Busch is a party to multiple actions originally filed in a federal district court under Section 1369 that arise from the same accident as this action. *See e.g., Passa v. Derderian*, 03-CV-148; *Kingsley v. Derderian*, 03-CV-208; *Guindon v. American Foam Corp.*, 03-CV-335; *Henault v. American Foam Corp.*, 03-CV-483; *Roderiques v. American Foam Corp.*, 04-CV-26; *Sweet v. American Foam Corp.*, 04-CV-56.

NATURE OF THE ACTION

Plaintiffs are alleged to be citizens of multiple states including Rhode Island, Massachusetts, Connecticut, Florida, Maine and Ohio. *See* Compl. at ¶¶ 1- 226.

² Section 1441(e) was revised at the time the MMTJA was enacted to set forth the criteria for removing actions governed by the Act.

7. Plaintiffs allege that “on February 20, 2003 . . . a fire was caused to spread throughout and to consume the premises at 211 Cowesett Avenue, West Warwick,” and that as a result, “plaintiffs were caused to sustain injuries and/or death and other damages.” *Id.* at ¶ 271.

8. The Complaint names fifty-seven defendants, including ten “John Doe” defendants.

9. Plaintiffs assert a negligence claim against defendant Anheuser-Busch, Inc. *Id.* at ¶ 386.

SUBJECT MATTER JURISDICTION

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1369(a) which provides that:

The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if (1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place; (2) any two defendants reside in different States regardless of whether such defendants are also residents of the same State or States; or (3) substantial parts of the accident took place in different States.

28 U.S.C. § 1369(a)(1)-(3) (2003).

11. “[M]inimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another state.” 28 U.S.C.

§ 1369(c)(1) (2004). Such is the case here because at the time of the filing of the action and at all times since, defendant Anheuser-Busch, Inc. is a corporation organized under the laws of the state of Missouri, with its principal place of business in St. Louis,

Missouri, and at least one plaintiff is a citizen of another state. For example, at the time of the filing of this action and “at times material hereto,” plaintiff Kathleen Sullivan is alleged to be a citizen of the state of Massachusetts. *See* Compl. at ¶ 80. Accordingly, minimal diversity exists between adverse parties.

12. At least seventy-five people died as a result of the fire at The Station. *See id.* at p. 17.

13. Jurisdiction is proper under at least two of the three independent bases set forth in Section 1369(a). The requirement of Section 1369(a)(1) is satisfied because the residency³ of one defendant, Anheuser-Busch, a Missouri resident, differs from the state where a substantial part of the accident occurred.

14. In addition, Section 1369(a)(2) is satisfied because at least two of the defendants reside in different states, as it is alleged that defendants Jack Russell (the lead singer of Great White) and Daniel Biechele (Great White’s tour manager) are California residents, *see* Compl. at ¶¶ 328, 368, while Anheuser-Busch is a Missouri resident. *Id.* at ¶ 376.

REMOVAL AUTHORITY

15. Removal of this action is authorized under 28 U.S.C. §1441(e)(1), which provides for removal if:

(A) the action could have been brought in a United States court under section 1369 [of title 28]; or (B) the defendant is a party to an action which is or could have been brought, in whole or part, under section 1369 in a United States

³ For purposes of this section, “a corporation is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business.” 28 U.S.C. §1369(c)(2) (2003).

district court and arises from the same accident as the action in the State court, even if the action to be removed could not have been brought in a district court as an original matter.

28 U.S.C. § 1441(e)(1)(A) and (B). This case is removable under both subsections 1441(e)(1)(A) and (B).

16. Removal is proper under Section 1441(e)(1)(A) because, as established previously, this action could have originally been brought in federal court under Section 1369. *See supra* ¶¶ 12-15.

17. Removal is also independently proper under Section 1441(e)(1)(B) because Anheuser-Busch is a party to multiple actions which were filed in federal court, assert jurisdiction under Section 1369, and arise out of the same accident as the instant action. *See Exhibit A*. “As a result, § 1441(e)(1)(B) allows Anheuser-Busch to remove to federal court any civil action arising from the same accident in which it is named as a defendant.” *Passa*, 308 F. Supp. 3d at 63.

18. This Notice of Removal is timely under Section 1441(e) which provides:

Removal of an action under this section shall be made in accordance with section 1446 of this title . . . or at a later time with leave of the district court.

28 U.S.C. § 1441(e) (2003).

19. As of the date of the filing of this Notice of Removal, Anheuser-Busch had not been served with process, therefore the removal is well within the 30-day period provided for in 28 U.S.C. § 1446(b). Moreover, Section 1441(e) also provides that removal may take place at a later time with leave of the district court. *See id.*

20. Finally, unlike the general rule pertaining to actions removable under 28 U.S.C. § 1441(a), consent of all properly joined and served defendants is not required under Section 1441(e). The plain language of Section 1441(e) vests the right of removal in “a defendant” in the singular and thus must be interpreted to allow any defendant to remove without the consent of any other defendants.

21. In the alternative, if, assuming *arguendo*, that the Court found consent to be required for a removal under Section 1441(e), upon information and belief, only one defendant, the Town of West Warwick, has waived service and has filed its own Notice of Removal which would indicate its consent. *See Hernandez-Lopez v. Commonwealth of Puerto Rico*, 30 F. Supp. 2d 205, 208 (D.P.R. 1998) (consent requirement extends only to properly joined and served defendants).

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

22. Pursuant to 28 U.S.C. § 1446(a), as of the date of this Notice, defendant has not been served with any process, pleadings, or orders, therefore none are attached hereto.

23. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is also being filed with the Clerk of the Superior Court of Providence County, Rhode Island and defendant will also promptly give written notice to all adverse parties of the filing of this Notice of Removal.

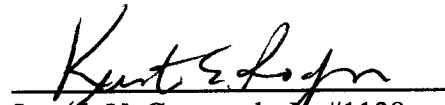
24. By removing this action to this Court, defendant does not waive any available defenses.

25. Defendant reserves the right to amend or supplement this

Notice of Removal.

ANHEUSER-BUSCH, INC.,

By its Attorneys,

A handwritten signature in black ink, appearing to read "Kurt E. Logan", is written over a horizontal line.

Joseph V. Cavanagh, Jr. #1139

Kristin E. Rodgers #4842

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Dated: July 23, 2004

CERTIFICATION

I hereby certify that on the 23rd day of July, 2004, I served a true copy of the within document via first class mail, postage prepaid to the following parties:

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Cynthia Dragon

Ex. A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, Administrator, et al.
Plaintiffs

vs.

JEFFREY DERDERIAN, et al.
Defendants

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:

C.A. No. 04-312-L

NOTICE OF PENDENCY OF OTHER ACTIONS AND PROCEEDINGS

Pursuant to Rule 31 of the Local Rules of the United States District Court for the District of Rhode Island, defendant Anheuser-Busch, Inc. submits that the following list of actions and proceedings known to counsel for Anheuser-Busch as of this date:

United States District Court for the District of Rhode Island

1. C.A. No. 03-148-L Tammy Passa, Alias, Walter Castle, Jr., Alias and Cheryl Harris-Rossi (next-of-kin of decedent, Joseph E. Rossi) v. Jeffrey Derderian, Michael Derderian, DERCO, LLC, Manic Music Management, Inc., Jack Russell, Mark Kendall, David Filice, Eric Powers, Daniel Bichele, Paul Woolnough, Knight Records, Inc., Anheuser-Busch Companies, Inc., Anheuser-Busch Inc., McLaughlin & Moran, Inc., Shell Oil Co. d/b/a/ Motiva Enterprises, LLC, Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, American Foam Corporation, General Foam Corporation, Foamex International, Inc., WHJY, Inc., Clear Channel Communications, Inc., Clear Channel Broadcasting, Inc., Town of West Warwick, Dennis Larocque (individually and as Fire Inspector for the Town of West Warwick), State of Rhode Island, Irving J. Owens (individually and in his capacity as Fire Marshall for the State of Rhode Island), Triton Realty Limited Partnership, Triton Realty, Inc., and

Marshall for the State of Rhode Island), Triton Realty Limited Partnership, Triton Realty, Inc., and John Does 1 through 100.

Personal injury claims, including counts for negligence, strict liability, breach of implied warranty of merchantability relating to the deaths and/or injuries to plaintiffs.

(Atty. - Ronald J. Resmini, Esq., 155 South Main Street, Providence, RI 02903)

2. C.A. No. 03-208-L Ronald Kingsley, as parent and next friend of Zoe Jean Kingsley, a minor, and on behalf of all beneficiaries of Lisa Kelly, decedent v. Jeffrey Derderian, Michael Derderian, DERCO d/b/a The Station, Manic Music Management, Jack Russell, Mark Kendall, David Filice, Eric Powers, Daniel Bichele, Paul Woolnough, Knight Records, Inc., Anheuser-Busch, Inc., McLaughlin & Moran, Inc., Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, American Foam Corporation, WHJY-FM, Clear Channel Communications, Inc., and Does 1 through 100. Personal injury claims, including counts for negligence, strict liability, sponsorship liability. Removed from Providence County Superior Court on May 30, 2003, and docketed therein as C.A. No. PC 03-1171. (Atty. - Stefanie DiMaio Larivee, Esq., 215 Broadway, Providence, RI 02903)
3. M.C. 03-70-L In Re: The Station Fire In West Warwick, Rhode Island on February 20, 2003. Removed from Providence County Superior Court on August 7, 2003, and captioned therein as M.P. 03-1326, Petition of Luis F. Alves & Mary A. Alves (statutory beneficiaries of Luis S. Alves, deceased), and Robert W. Rager. Petitioners stated intent to present civil claims and sought (1) court order authorizing their investigative team to enter premises of The Station to conduct forensic examination and investigation; and (2) permission to subpoena WPRI-TV for all video recordings made at The Station on February 20, 2003. (Atty. - Patrick T. Jones, Esq., Cooley Manion &

Jones, LLP, One center Place, Providence, RI 02903)

4. M.C. 03-71-L In Re: The Station Fire In West Warwick, Rhode Island on February 20, 2003. Removed from Providence County Superior Court on August 7, 2003 and captioned therein as M.P. 03-1346, Petition of Judith O'Brien (mother of Robert J. Reisner, deceased), Lawrence Fick (father & guardian of minor children of Charlene Fick, deceased), Deborah Lemay, Claire Bruyere (mother of Bonnie Hamelin. deceased), Nancy A. Lee (mother of Christopher Prouty, deceased), Michael Perrault. Petitioners stated intent to present civil claims and retained a team of fire investigation professionals to conduct on-site investigation, and sought (1) permission for experts to enter site and conduct forensic fire investigation; and (2) permission to subpoena WPRI-TV for all video recordings made at The Station on February 20, 2003.
(Atty. - Mark S. Mandell, Esq. & Yvette M. Boisclair, Esq., Mandell, Schwartz & Boisclair, One Park Row, Providence, RI 02903 [on behalf of O'Brien, Fick & Lemay], and Max Wistow, Esq., Wistow & Baryllick, Inc., 61 Weybosset Street, Providence, RI 02903 [on behalf of Bruyere, Lee & Perrault])
5. C.A. No. 03-335-L George Guindon, Barbara Guindon (individually and as mother and next of friend of Erica Guindon, minor), Tammy Ayer (guardian and next of friend of Kayla Marie Dorothy Abbenante Ayer, minor), Louis Rossi (administrator of Estate of Joseph Rossi), Christopher Scot, Julianna Giaven, Eric Malardo, Michelle Malardo, Richard Sanetti, Patricia Sanetti, Michelle Spence (individually and as mother and next of friend of Hailey Spence, minor), Catherine Carignan, Edward Corbett, III, Paul and Betty Roe (individually and as co-administrators of the Estate of Lori K. Durante), Daniel Davidson, and Stephen Bruno v. American Foam Corporation, Foamex International, Barry H. Warner, Triton Realty Limited Partnership, Jeffrey Derderian, Michael

Derderian, DERCO, LLC, Manic Music Management, Inc., Jack Russell, Mark Kendall, David Filice, Eric Powers, Daniel Bichele, Paul Woolnough, Knight Records, Inc., Anheuser-Busch, Inc., McLaughlin & Moran, Inc., Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, Clear Channel Communications, Inc. d/b/a WHJY-FM, Motiva Enterprises, LLC, Shell Oil Company, Town of West Warwick, Dennis Larocque, State of Rhode Island and Irving J. Owens. Personal injury claims, including counts for negligence, product liability, wrongful death, and loss of consortium relating to the deaths and/or injuries to plaintiffs.
(Atty. - Brian R. Cunha, Esq., Brian Cunha & Associates, 904 Broadway, East Providence, RI 02914)

6. C.A. No. 03-483-L Estate of Jude B. Henault by Chad M. Henault and Angela Boggs (co-administrators), Angela Boggs (individually), Rachel M. Henault (ppa Chad M. Henault), Andrew J. Henault (ppa Chad M. Henault), Estate of Samuel A. Miceli, Jr. by Madeline P. Miceli (administrator), Estate of Melvin A. Gerfin, Jr. by Deborah A. Gerfin and Laura Gerfin (co-administrators), Deborah Gerfin (individually), Laura Gerfin (individually), Kelly Gerfin (ppa Deborah Gerfin), Meagan Gerfin (ppa Deborah Gerfin), Nancy Noyes, Caroline Telegarsky (administrator of Estate of Sara Jane Telegarsky), Sarah Jane Telegarsky (individually), Glenn Johnson, Lisa Johnson, and Melanie Holliday v. American Foam Corporation, Barry H. Warner, Triton Realty Limited Partnership, Jeffrey Derderian, Michael Derderian, DERCO, LLC, Manic Music Management, Inc., Jack Russell, Mark Kendall, David Filice, Eric Powers, Daniel Bichele, Paul Woolnough, Knight Records, Inc., Anheuser-Busch, Inc., McLaughlin & Moran, Inc., Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, Clear Channel Communications, Inc. d/b/a WHJY-FM, Strawberries, Inc., Citadel Communications Corporation d/b/a WQGN-Fm, Motiva Enterprises, LLC, Shell Oil Company, Town of West Warwick,

Dennis Larocque, State of Rhode Island and Irving J. Owens. Personal injury claims, including counts for negligence, loss of consortium and joint venture theories relating to the deaths and/or injuries to plaintiffs. Transferred from the United States District Court for the District of Connecticut on October 22, 2003, and docketed therein as C.A. no. 3:03-CV-00999-DJS.

(Atty. - Robert Reardon, Esq. & Robert T. Rimmer, Esq., The Reardon Law Firm, P.C., 160 Hempstead Street, New London, CT 06320 [on behalf of Henault, Miceli, Gerfin and Noyes plaintiffs], John J. Nazzaro, Esq., 164 Hempstead Street, New London, CT 06320 [on behalf of Gerfin plaintiffs], Daniel J. Horgan, Esq., Shaw Cove 5, Suite 200, New London, CT 06320 [on behalf of Johnsons and Holliday plaintiffs], Ralph J. Monaco, Esq., Conway & Londregan, P.C., 38 Huntington Street, P.O. Box 1351, New London, CT 06320 [on behalf of Telegarsky plaintiffs])

7. C.A. 04-026-L

Linda Roderiques (individually, as administrator of the Estate of Donald Roderiques, and as mother and next of friend Mandi Roderiques, minor) v. American Foam Corporation, Foamex International, Barry H. Warner, Triton Realty Limited Partnership, Jeffrey Derderian, Michael Derderian, DERCO, LLC, Manic Music Management, Inc., Jack Russell, Mark Kendall, David Filice, Eric Powers, Daniel Bichele, Paul Woolnough, Knight Records, Inc., Anheuser-Busch, Companies, Inc., McLaughlin & Moran, Inc., Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, Clear Channel Communications, Inc. d/b/a WHJY-FM, Motiva Enterprises, LLC, Shell Oil Company, Town of West Warwick, Dennis Larocque, State of Rhode Island and Irving J. Owens. Personal injury claims, including counts for negligence, product liability, wrongful death, and loss of consortium relating to the deaths and/or injuries to plaintiffs. Transferred from the United States District Court for the District of Massachusetts on February 2, 2004, and docketed therein as C.A. No. 03-11497-MEL.

(Atty. - Brian R. Cunha, Esq., Brian Cunha & Associates, 904 Broadway, East Providence, RI 02914)

8. C.A. 04-056-L

Charles and Carol Sweet (individually and as administrators of the Estate of Shawn Sweet) v. American Foam Corporation, Foamex International, Barry H. Warner, Triton Realty Limited Partnership, Jeffrey Derderian, Michael Derderian, DERCO, LLC, Manic Music Management, Inc., Jack Russell, Mark Kendall, David Filice, Eric Powers, Daniel Bichele, Paul Woolnough, Knight Records, Inc., Anheuser-Busch, Companies, Inc., McLaughlin & Moran, Inc., Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, Clear Channel Communications, Inc. d/b/a WHJY-FM, Motiva Enterprises, LLC, Shell Oil Company, Town of West Warwick, Dennis Larocque, State of Rhode Island and Irving J. Owens. Personal injury claims, including counts for negligence, product liability, wrongful death, and loss of consortium relating to the deaths and/or injuries to plaintiffs. Transferred from the United States District Court for the District of Massachusetts on February 24, 2004, and docketed therein as C.A. No. 03-11496-RWZ. (Atty. - Brian R. Cunha, Esq., Brian Cunha & Associates, 904 Broadway, East Providence, RI 02914)

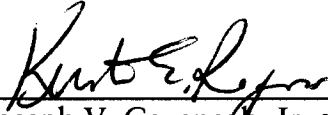
Rhode Island Superior Court, Providence County

9. M.P. 03-1401

Petition of Renee C. Walton (temporary guardian of Gina Gauvin). Petitioner stated intent to present civil claim and has retained fire investigation expert. Sought and was granted permission (1) for expert to enter site to conduct a forensic fire investigation; and (2) permission to subpoena WPRI-TV for all video recordings made at The Station on February 20, 2003) (Atty. - Charles N. Redihan, Jr., Kiernan, Plunkett & Redihan, 91 Friendship Street, Providence, RI 02903)

ANHEUSER-BUSCH, INC.

By its Attorneys,

A handwritten signature in cursive script, appearing to read "Joseph V. Cavanagh, Jr.", is written over a horizontal line.

Joseph V. Cavanagh, Jr. #1139

Kristin E. Rodgers #4842

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Dated: July 23, 2004